

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 898 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

GUNJAN CORPORATION

Versus

PUNJAB NATIONAL BANK

Appearance:

MR PC KAVINA for Petitioners
MR AC GANDHI for Respondent

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 15/09/97

ORAL JUDGEMENT

1. Petitioners are the defendants who are aggrieved by the judgment and order dated 24.6.1994 passed by the Chamber Judge of the City Civil Court at Ahmedabad on summons for judgment directing them to deposit the amount of Rs. 4 lacs as condition to defend the suit.

2. The respondent is the original plaintiff, which

is a Nationalised Bank and it has instituted summary suit against the petitioners - defendants to recover the total amount of Rs. 8,20,454/-. It appears that bank was in need of residential flats for its officers in the city of Ahmedabad, for which a public advertisement was given inviting tenders and out of several offers received, the tender of the present petitioners was accepted. The necessary documents in that behalf were executed and the petitioners were expected to provide 33 flats to the bank on the piece and parcel of land at Bodakdev on land bearing Survey No. 348/1-part and final plot No. 230 paiki and sub-plot No. 1 - part of Town Planning Scheme No.1 of Bodakdev admeasuring 7643 sq. meters. It appears that for the purpose of the said construction, petitioners were granted a term loan facility of Rs. 71,16,375/-. After the construction of 26 flats, according to petitioners, they had advised the bank to take possession thereof on 8.2.1988. But, according to the petitioners, they did not act and after expiry of some four to 5 months, the bank insisted for issuance of certain certificates. It is the case of the defendants that though the flats were ready for possession, the bank delayed the taking over of possession and ultimately instituted the suit after giving Notice dated 8th of July, 1992 for a sum of Rs. 6,68,314/- and interest upto 31st March, 1992 at the rate of 23.75 per cent per annum from 31st March, 1992. In such a suit, initially on 22nd of April, 1994, the learned Chamber Judge of the City Civil Court granted unconditional leave which order was set aside on that very day on oral application of the bank. It is thereafter that the summons for judgment was taken up for hearing and the learned Chamber Judge has imposed the condition of Rs. 4 lacs, against which the defendants have preferred the present Civil Revision Application. On very day when the condition was imposed, an application was given by the petitioners to set aside such order and to pass the order after hearing them and such application was rejected. Being dissatisfied with such order as well as the order imposing condition of Rs. 4 lacs, the petitioners defendants are before this court.

3. The law on the subject as to whether conditional or unconditional leave should be granted is by this time well established and in the case of M/S MECHALEC ENGINEERS & MANUFACTURERS v. M/S BASIC EQUIPMENT CORPORATION, reported in AIR 1977 SC 577 Justice M.H. Beg of the Apex Court speaking for the Bench propounded that the following principles are to be followed while considering the question of granting leave to defend:

- (a) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.
- (b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.
- (c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiffs claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.
- (d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.
- (e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition and thereby show mercy to the defendant by enabling him to try to prove a defence.

4. Applying the aforesaid principles in the present case and in absence of the fact that there is no actual counter claim filed though such a statement is made and in view of the further fact that there is a claim of a Nationalised Bank, in whose favour a performance guarantee is there and unfortunately an undertaking is executed by the petitioners, the defence of the

petitioners cannot be said to be one which is absolutely genuine or one which the court would ultimately accept. It is also difficult for the court to say that the defence of the petitioners - defendants is bogus, nominal, moonshine or lacking in good faith nor can the defendant be accepted to file the counter claim at the stage of deciding the summons for judgment because the stage of filing the counter claim would arise at a stage when the written statement is to be filed after the summons for judgment is decided. Therefore, without giving any importance of the fact as to whether actually the counter claim is filed or not, I am of the opinion that the interest of justice would be met if the petitioners - defendants are granted conditional leave to defend on their depositing the amount of Rs. 1,20,454/within a period of four months from today.

5. In the result, the CRA is partially allowed. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

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